

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Wells Fargo Bank, National Association,	)	File No.
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT</b>
	)	
Passages of Arizona, LLC, a Minnesota	)	
limited liability company; Robert L.	)	
Hoffman; Patrick C. Hoffman; Kevin M.	)	
Hoffman; and Gregory J. Hoffman,	)	
	)	
Defendants.	)	
	)	

Plaintiff Wells Fargo Bank, National Association (“Wells Fargo”), for its Complaint against defendants Passages of Arizona, LLC, Robert L. Hoffman, Patrick C. Hoffman, Kevin M. Hoffman, and Gregory J. Hoffman, hereby states and alleges:

**PARTIES**

1. Wells Fargo is a national banking association organized and existing under the laws of the United States whose articles of association designate South Dakota as the location of its main office.

2. Passages of Arizona, LLC (the “Borrower”) is a Minnesota limited liability company with offices at 13795 Frontier Court, Suite 200, Burnsville, Minnesota.

3. Robert L. Hoffman, Patrick C. Hoffman, Kevin M. Hoffman, and Gregory J. Hoffman (collectively the “Guarantors”) are individuals who upon information and belief each reside in Minnesota.

### **JURISDICTION**

4. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332 because the amount in controversy exceeds the sum or value of \$75,000 (exclusive of interest and costs) and is between citizens of different states, as Wells Fargo is a citizen of South Dakota for diversity purposes, while the Borrower and Guarantors are citizens of Minnesota.

### **VENUE**

5. Venue in this district is proper under 28 U.S.C. § 1391 because the Borrower and Guarantors reside in this District within the meaning of 28 U.S.C. § 1391.

### **FACTS**

6. By date of October 31, 2006, the Borrower executed and delivered to the Lender an Unsecured Loan Agreement, as subsequently amended by that certain Modification Agreement dated September 20, 2007, and that certain Second Modification Agreement Unsecured Loan dated February 22, 2010 (collectively, the "Loan Agreement").

7. Consistent with the terms of the Loan Agreement, the Borrower executed and delivered to the Lender that certain Amended and Restated Promissory Note dated February 22, 2010 in an original principal amount of \$400,000.00 (the "Note"). A true and correct copy of the Note is attached hereto as Exhibit A and incorporated herein by reference. Pursuant to the terms of the Note, the Borrower agreed to pay the unpaid principal balance and all unpaid interest due thereunder on January 31, 2011.

8. To secure payments due under the Note, Robert L. Hoffman executed and delivered to the Lender that certain Amended and Restated Repayment Guaranty (Unsecured Loan) dated February 22, 2010 (the "RLH Guaranty"). A true and correct copy of the RLH

Guaranty is attached hereto as Exhibit B and incorporated herein by reference. Pursuant to the terms of the RLH Guaranty, Robert L. Hoffman guaranteed and promised to pay to the Lender the principal sum of \$400,000.00 or so much thereof as may be due and owing under the Note together with interest and any other sums payable under the Note or any other loan documents.

9. To further secure payments due under the Note, Patrick C. Hoffman, Kevin M. Hoffman, and Gregory J. Hoffman each executed and delivered to the Lender a Guaranty (Unsecured Loan) dated October 31, 2006 (the "Hoffman Guaranties", and together with the RLH Guaranty the "Guaranties"). True and correct copies of the Hoffman Guaranties are attached hereto as Exhibits C, D and E and incorporated herein by reference. Pursuant to the terms of the Hoffman Guaranties, Patrick C. Hoffman, Kevin M. Hoffman, and Gregory J. Hoffman each guaranteed and promised to pay to the Lender the principal sum of \$800,000.00 or so much thereof as may be due and owing under the Note together with interest and any other sums payable under the Note or any other loan documents.

10. The Borrower failed to pay the unpaid principal balance and all unpaid interest of the Note on January 31, 2011. Written notice of the Borrower's default was given to the Borrower and Guarantors by letter dated March 2, 2011 (the "Notice"). A true and correct copy of the Notice is attached hereto as Exhibit F and incorporated herein by reference.

11. Pursuant to the terms of the Loan Agreement, the Note and the Guaranties (collectively, the "Loan Documents"), the outstanding balance of the Note is now due and payable in full by the Borrower and Guarantors, which amount as of January 31, 2011 includes an outstanding principal balance of \$400,000.00. Interest and other fees and

expenses continue to accrue. The Borrower and Guarantors have not made payment in full of all such amounts and are in default under the terms of the Loan Documents.

**COUNT I**  
**(Default on the Note)**

12. The Lender restates and realleges paragraphs 1 through 11 above.

13. The Borrower defaulted on the Note by failing to make payment on the Note when due. The Borrower is liable to the Lender for the outstanding balance of the Note, which amount as of January 31, 2011 includes an outstanding principal balance of \$400,000.00, plus accrued and unpaid interest, plus attorneys' fees and collection costs.

14. By reason of the Borrower's default, the Lender is entitled to judgment against the Borrower in the amount of the outstanding balance of the Note, which amount as of January 31, 2011 includes an outstanding principal balance of \$400,000.00, plus accrued and unpaid interest, attorneys' fees, collection costs, and other fees and costs due thereunder.

**Count II**  
**(Default on the Guaranties)**

15. The Lender restates and realleges paragraph 1 through 14 above.

16. The Guarantors executed and delivered the Guaranties in which they guaranteed and promised to pay to the Lender the outstanding balance of the Note together with interest and any other sums payable under the Note or any other Loan Documents. The Guarantors have not paid amounts now due and owing, and so are in default under the Guaranties. The Guarantors are liable to the Lender for the outstanding balance of the Note, which amount as of January 31, 2011 includes an outstanding principal balance of \$400,000.00, plus accrued and unpaid interest, plus attorneys' fees and collection costs.

17. By reason of the Guarantors' default, the Lender is entitled to judgment against the Guarantors in the amount of the outstanding balance of the Note, which amount as of January 31, 2011 includes an outstanding principal balance of \$400,000.00, plus accrued and unpaid interest, attorneys' fees, collection costs, and other fees and costs due thereunder.

**WHEREFORE**, the Lender seeks judgment against the defendants as follows:

1. Judgment against the Borrower and the Guarantors, jointly and severally, in the amount of the outstanding balance of the Note, which amount as of January 31, 2011 includes an outstanding principal balance of \$400,000.00, plus accrued and unpaid interest, attorneys' fees, collection costs, and other fees and costs due thereunder.

2. Such further relief as the Court may find just and equitable.

Dated: April 28, 2011

FAEGRE & BENSON LLP

/s/ D. Charles Macdonald

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ACKNOWLEDGMENT REQUIRED BY  
MINN. STAT. § 549.211, SUBD. 1

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, Subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, Subd. 2.

Dated: April 28, 2011

FAEGRE & BENSON LLP

/s/ D. Charles Macdonald

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